

SENATE BILL NO. 540

INTRODUCED BY JACKSON, COCCHIARELLA, BROWN, SQUIRES, SMITH, STEINBEISSER, BALLYEAT,  
LARSON

BY REQUEST OF THE SENATE BUSINESS, LABOR, AND ECONOMIC AFFAIRS STANDING  
COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING POSSESSION OF AN ANTIQUE ILLEGAL GAMBLING  
DEVICE BY A LICENSED RETAIL BUSINESS ESTABLISHMENT FOR PURPOSES OF RESALE AND NOT  
FOR OPERATION; AMENDING ~~SECTION~~ SECTIONS 23-5-112, 23-5-152, AND 23-5-153, MCA; AND  
PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**SECTION 1. SECTION 23-5-112, MCA, IS AMENDED TO READ:**

**"23-5-112. Definitions.** Unless the context requires otherwise, the following definitions apply to parts  
1 through 8 of this chapter:

(1) "Applicant" means a person who has applied for a license or permit issued by the department  
pursuant to parts 1 through 8 of this chapter.

(2) "Application" means a written request for a license or permit issued by the department. The  
department shall adopt rules describing the forms and information required for issuance of a license.

(3) "Authorized equipment" means, with respect to live keno or bingo, equipment that may be inspected  
by the department and that randomly selects the numbers.

(4) "Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5 columns  
of 5 squares each, 25 squares in all. The letters B-I-N-G-O must appear above the design, with each letter above  
one of the columns. More than 75 numbers may not be used. One number must appear in each square, except  
for the center square, which may be considered a free play. Numbers are randomly drawn using authorized  
equipment until the game is won by the person or persons who first cover one or more previously designated  
arrangements of numbers on the bingo card.

(5) "Bingo caller" means a person 18 years of age or older who, using authorized equipment, announces  
the order of the numbers drawn in live bingo.

- 1 (6) "Card game table" or "table" means a live card game table:  
2 (a) authorized by permit and made available to the public on the premises of a licensed gambling  
3 operator; or  
4 (b) operated by a senior citizen center.
- 5 (7) "Card game tournament" means a gambling activity for which a permit has been issued involving  
6 participants who pay valuable consideration for the opportunity to compete against each other in a series of live  
7 card games conducted over a designated period of time.
- 8 (8) "Dealer" means a person with a dealer's license issued under part 3 of this chapter.
- 9 (9) "Department" means the department of justice.
- 10 (10) "Distributor" means a person who:  
11 (a) purchases or obtains from a licensed manufacturer, distributor, or route operator equipment of any  
12 kind for use in gambling activities; and  
13 (b) sells the equipment to a licensed distributor, route operator, or operator.
- 14 (11) (a) "Gambling" or "gambling activity" means risking any money, credit, deposit, check, property, or  
15 other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a gambling  
16 device or gambling enterprise.  
17 (b) The term does not mean conducting or participating in a promotional game of chance and does not  
18 include amusement games regulated by Title 23, chapter 6, part 1.
- 19 (12) "Gambling device" means a mechanical, electromechanical, or electronic device, machine, slot  
20 machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling  
21 activity.
- 22 (13) "Gambling enterprise" means an activity, scheme, or agreement or an attempted activity, scheme,  
23 or agreement to provide gambling or a gambling device to the public.
- 24 (14) (a) "Gift enterprise" means a gambling activity in which persons have qualified to obtain property to  
25 be awarded by purchasing or agreeing to purchase goods or services.  
26 (b) The term does not mean:  
27 (i) a cash or merchandise attendance prize or premium that county fair commissioners of agricultural  
28 fairs and rodeo associations may give away at public drawings at fairs and rodeos;  
29 (ii) a promotional game of chance; or  
30 (iii) an amusement game regulated under Title 23, chapter 6.

1 (15) "Gross proceeds" means gross revenue received less prizes paid out.

2 (16) "Illegal gambling device" means a gambling device not specifically authorized by statute or by the  
3 rules of the department. The term includes:

4 (a) a ticket or card, by whatever name known, containing concealed numbers or symbols that may match  
5 numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push card, tip  
6 board, pickle ticket, break-open, or jar game, except for one used under Title 23, chapter 7, or under part 5 of this  
7 chapter or in a promotional game of chance approved by the department; and

8 (b) an apparatus, implement, or device, by whatever name known, specifically designed to be used in  
9 conducting an illegal gambling enterprise, including a faro box, faro layout, roulette wheel, roulette table, ~~or~~ craps  
10 table, ~~or~~ a slot machine, except as provided in 23-5-153.

11 (17) "Illegal gambling enterprise" means a gambling enterprise that violates or is not specifically  
12 authorized by a statute or a rule of the department. The term includes:

13 (a) a card game, by whatever name known, involving any bank or fund from which a participant may win  
14 money or other consideration and that receives money or other consideration lost by the participant and includes  
15 the card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

16 (b) a dice game, by whatever name known, in which a participant wagers on the outcome of the roll of  
17 one or more dice, including craps, hazard, or chuck-a-luck, but not including activities authorized by 23-5-160;

18 (c) sports betting, by whatever name known, in which a person places a wager on the outcome of an  
19 athletic event, including bookmaking, parlay bets, or sultan sports cards, but not including those activities  
20 authorized in Title 23, chapter 4, and parts 2, 5, and 8 of this chapter;

21 (d) credit gambling; and

22 (e) internet gambling.

23 (18) (a) "Internet gambling", by whatever name known, includes but is not limited to the conduct of any  
24 legal or illegal gambling enterprise through the use of communications technology that allows a person using  
25 money, paper checks, electronic checks, electronic transfers of money, credit cards, debit cards, or any other  
26 instrumentality to transmit to a computer information to assist in the placing of a bet or wager and corresponding  
27 information related to the display of the game, game outcomes, or other similar information.

28 (b) The term does not include the operation of a simulcast facility allowed by Title 23, chapter 4, or the  
29 state lottery provided for in Title 23, chapter 7. If all aspects of the gaming are conducted on Indian lands in  
30 conformity with federal statutes and with administrative regulations of the national Indian gaming commission,

1 the term does not include class II gaming or class III gaming as defined by 25 U.S.C. 2703.

2 (19) "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows  
3 and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall  
4 select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

5 (20) "Keno caller" means a person 18 years of age or older who, using authorized equipment, announces  
6 the order of the numbers drawn in live keno.

7 (21) "License" means a license for an operator, dealer, card room contractor, manufacturer of devices  
8 not legal in Montana, sports tab game seller, manufacturer of electronic live bingo or keno equipment, other  
9 manufacturer, distributor, or route operator that is issued to a person by the department.

10 (22) "Licensee" means a person who has received a license from the department.

11 (23) "Live card game" or "card game" means a card game that is played in public between persons on  
12 the premises of a licensed gambling operator or in a senior citizen center.

13 (24) (a) "Lottery" means a scheme, by whatever name known, for the disposal or distribution of property  
14 among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property  
15 or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that  
16 it is to be distributed or disposed of by lot or chance.

17 (b) The term does not mean lotteries authorized under Title 23, chapter 7.

18 (25) "Manufacturer" means a person who:

19 (a) assembles from raw materials or subparts a completed piece of equipment or pieces of equipment  
20 of any kind to be used as a gambling device and who sells the equipment directly to a licensed distributor, route  
21 operator, or operator; or

22 (b) possesses gambling devices or components of gambling devices for the purpose of testing them.

23 (26) "Nonprofit organization" means a nonprofit corporation or nonprofit charitable, religious, scholastic,  
24 educational, veterans', fraternal, beneficial, civic, senior citizens', or service organization established for purposes  
25 other than to conduct a gambling activity.

26 (27) "Operator" means a person who purchases, receives, or acquires, by lease or otherwise, and  
27 operates or controls for use in public a gambling device or gambling enterprise authorized under parts 1 through  
28 8 of this chapter.

29 (28) "Permit" means approval from the department to make available for public play a gambling device  
30 or gambling enterprise approved by the department pursuant to parts 1 through 8 of this chapter.

1 (29) "Person" or "persons" means both natural and artificial persons and all partnerships, corporations,  
2 associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

3 (30) "Premises" means the physical building or property within or upon which a licensed gambling activity  
4 occurs, as stated on an operator's license application and approved by the department.

5 (31) "Promotional game of chance" means a scheme, by whatever name known, for the disposal or  
6 distribution of property among persons who have not paid or are not expected to pay any valuable consideration  
7 or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the  
8 property, a portion of it, or a share in it. The property is disposed of or distributed by simulating a gambling  
9 enterprise authorized by parts 1 through 8 of this chapter or by operating a device or enterprise approved by the  
10 department that was manufactured or intended for use for purposes other than gambling.

11 (32) "Public gambling" means gambling conducted in:

12 (a) a place, building, or conveyance to which the public has access or may be permitted to have access;

13 (b) a place of public resort, including but not limited to a facility owned, managed, or operated by a  
14 partnership, corporation, association, club, fraternal order, or society, including a religious or charitable  
15 organization; or

16 (c) a place, building, or conveyance to which the public does not have access if players are publicly  
17 solicited or the gambling activity is conducted in a predominantly commercial manner.

18 (33) "Raffle" means a form of lottery in which each participant pays valuable consideration for a ticket to  
19 become eligible to win a prize. Winners must be determined by a random selection process approved by  
20 department rule.

21 (34) "Route operator" means a person who:

22 (a) purchases from a licensed manufacturer, route operator, or distributor equipment of any kind for use  
23 in a gambling activity;

24 (b) leases the equipment to a licensed operator for use by the public; and

25 (c) may sell to a licensed operator equipment that had previously been authorized to be operated on a  
26 premises.

27 (35) "Senior citizen center" means a facility operated by a nonprofit or governmental organization that  
28 provides services to senior citizens in the form of daytime or evening educational or recreational activities and  
29 does not provide living accommodations to senior citizens. Services qualifying under this definition must be  
30 recognized in the state plan on aging adopted by the department of public health and human services.

1 (36) (a) "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance,  
2 or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any  
3 valuable consideration, is available to play or operate, the play or operation of which, whether by reason of the  
4 skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or  
5 operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether  
6 the payoff is made automatically from the machine or in any other manner.

7 (b) This definition does not apply to video gambling machines authorized under part 6 of this chapter.

8 (37) "Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and  
9 the rules of the department."  
10

11 **Section 2.** Section 23-5-152, MCA, is amended to read:

12 **"23-5-152. Possession of illegal gambling device or conducting illegal gambling enterprise**  
13 **prohibited -- exceptions.** (1) Except as provided in 23-5-153 and subsections (2) through (5) ~~(6)~~ of this section,  
14 it is a misdemeanor punishable under 23-5-161 for a person to purposely or knowingly:

15 (a) have in the person's possession or under the person's control or permit to be placed, maintained,  
16 or kept in any room, space, enclosure, or building owned, leased, or occupied by or under the person's  
17 management or control an illegal gambling device; or

18 (b) operate an illegal gambling enterprise.

19 (2) Subsection (1) does not apply to a public officer or to a person coming into possession of an illegal  
20 gambling device in or by reason of the performance of an official duty and holding it to be disposed of according  
21 to law.

22 (3) (a) The department may adopt rules to license persons to manufacture gambling devices that are  
23 not legal for public play in the state.

24 (b) A person may not manufacture an illegal gambling device without having obtained a license from the  
25 department. The department may charge an administrative fee for the license that is commensurate with the cost  
26 of issuing the license.

27 (4) (a) A person licensed under subsection (3) may conduct only those activities authorized under this  
28 subsection (4).

29 (b) A licensee may bring an illegal gambling device, including an illegal video gambling machine, into  
30 the state if:

1 (i) the illegal gambling device contains a component that will be used by the licensee to manufacture an  
2 illegal gambling device for export from the state; or

3 (ii) the illegal gambling device will be reconditioned, refurbished, repaired, tested, or otherwise  
4 substantially modified in preparation for export from the state; and

5 (iii) the illegal gambling device will be exported from the state; and

6 (iv) the licensee has notified the department and received authorization from the department to bring the  
7 illegal gambling device into the state. The licensee is subject to reporting requirements provided for in rules  
8 adopted under subsection (3)(a).

9 (c) A licensee may also bring an illegal video gambling machine into the state if:

10 (i) the illegal video gambling machine will be reconditioned, refurbished, repaired, or otherwise  
11 substantially modified for conversion to an authorized video gambling machine; and

12 (ii) the licensee has notified the department and has received authorization from the department to bring  
13 the illegal video gambling machine into the state. The licensee is subject to reporting requirements provided for  
14 in rules adopted under subsection (3)(a).

15 (5) An illegal gambling device may be possessed or located for display purposes only and not for  
16 operation:

17 (a) in a public or private museum; or

18 (b) in any other public place if the device has been made permanently inoperable for purposes of  
19 conducting a gambling activity.

20 ~~(6) An ANTIQUE illegal gambling device may be possessed by a licensed retail business establishment~~  
21 ~~for purposes of resale and not for operation~~ PERSON LICENSED BY THE DEPARTMENT TO SELL ANTIQUE SLOT MACHINES  
22 ~~AND ANTIQUE ILLEGAL GAMBLING DEVICES LICENSED RETAIL BUSINESS ESTABLISHMENT FOR PURPOSES OF RESALE AND~~  
23 ~~NOT FOR OPERATION AS PROVIDED IN 23-5-153."~~

24

25 **SECTION 3. SECTION 23-5-153, MCA, IS AMENDED TO READ:**

26 **"23-5-153. Possession and sale of antique ~~slot machines and other antique illegal gambling~~**  
27 **~~devices.~~** (1) For the purposes of this section, an antique ~~slot machine is a mechanically or electronically operated~~  
28 ~~slot machine that at any present time is more than 25 years old.~~ An antique illegal gambling device is an illegal  
29 gambling device that at any present time is more than 25 years old.

30 (2) Except as provided in 23-5-152(6) AND subsection (3) OF THIS SECTION, an antique ~~slot machine or~~

1 ~~antique illegal gambling device~~ may be possessed, located, and operated only in a private residential dwelling.

2 (3) (a) An antique ~~slot machine or antique illegal gambling device~~ may be possessed or located for  
3 purposes of display only and not for operation:

4 (i) in a RETAIL BUSINESS ESTABLISHMENT OR public or private museum; or

5 (ii) in any other public place if the ~~machine or device~~ has been made permanently inoperable for purposes  
6 of conducting a gambling activity.

7 (b) A licensed manufacturer-distributor or a person licensed under subsection (4) may possess antique  
8 ~~slot machines and antique illegal gambling devices~~ for purposes of commercially selling or otherwise supplying  
9 the ~~machines~~ DEVICES.

10 (4) A person other than a licensed manufacturer-distributor may not sell more than three antique ~~slot~~  
11 ~~machines or three antique illegal gambling devices~~ in a 12-month period without first obtaining from the  
12 department ~~an annual~~ A license for selling the machines or other antique illegal gambling devices. The fee for the  
13 license is \$50 ~~a year~~, AND THE LICENSE IS VALID FOR 3 YEARS FROM THE DATE THAT THE LICENSE IS ISSUED. The fee  
14 must be retained by the department for administrative purposes. The department may not issue a license under  
15 this subsection to a licensed operator.

16 (5) A person or entity legally possessing a ~~an antique slot machine or illegal gambling device~~ under  
17 subsection (2) or (3) may sell or otherwise supply a ~~machine or device~~ to another person or entity who may legally  
18 possess a ~~slot machine or AN ILLEGAL GAMBLING device~~.

19 (6) An antique ~~slot machine or antique illegal gambling device~~ may not be operated for any commercial  
20 or charitable purpose."

21

22 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

23

24 NEW SECTION. Section 5. Retroactive applicability. [This act] applies retroactively, within the  
25 meaning of 1-2-109, to illegal gambling devices possessed by a licensed retail business establishment for  
26 purposes of resale and not for operation on or after December 31, 2006.

27

- END -